IT IS ORDERED as set forth below:

Date: January 24, 2020

Barbara Ellis-Monro
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE: Aspen Village At Lost Mountain Assisted Living, LLC, Debtor.	CASE NO. 19-40262-BEM CHAPTER 11

ORDER CONFIRMING CHAPTER 11 PLAN

This case came before the Court for a hearing (the "Hearing") on January 21, 2020 on confirmation of a chapter 11 plan filed by Aspen Village at Lost Mountain Assisted Living, LLC ("Debtor" or "Assisted Living"). Confirmation was opposed by Debtor's secured creditor, MidCap Funding Investment IV, LLC ("MidCap"). At the Hearing, the Court stated that an oral ruling would be announced on January 24, 2020.

The Court previously considered confirmation of Debtor's chapter 11 plan dated September 13, 2019 (the "September 13, 2019 Plan") [Doc. 146]. After an evidentiary hearing, the Court declined to confirm September 13, 2019 Plan because it failed to pay MidCap the

present value of its claim pursuant to 11 U.S.C. § 1129(b). An order to that effect was entered November 26, 2019 (the "Order Denying Confirmation"). [Doc. 158].

In the Order Denying Confirmation, the Court analyzed each of the elements of 11 U.S.C. § 1129(a) and found that each was met by the September 13, 2019 Plan except subsection (a)(8), thus triggering the "cram down" requirements of § 1129(b). The Court then found that the September 13, 2019 Plan was not "fair and equitable" as required by § 1129(b). It "concluded that the 7.5% rate is a sufficient rate of interest to provide MidCap with a market rate of interest plus compensation for the additional risk associated with this case." [Doc. 158 at 25]. However, it concluded that Debtor was not paying MidCap the present value of its secured claim under the September 13, 2019 Plan and therefore declined to confirm the plan.

Debtor filed its *Fourth Modification to Plan of Reorganization* on December 2, 2019 (the "Amendment") [Doc. 160], pursuant to the Order Denying Confirmation which provided that Debtor may amend the September 13, 2019 Plan on or before January 30, 2020. The Amendment changed the sentence "Interest shall accrue on the principal balance of the Allowed Class 6 Secured Claim at the rate of seven and one-half percent (7.5%) per annum" to "Interest shall accrue on the Allowed Class 6 Secured Claim at the rate of seven and one-half percent (7.5%) per annum." MidCap objected to confirmation of the September 13, 2019 Plan as modified by the Amendment on December 2, 2019 on the grounds that it is not feasible (the "Objection") [Doc. 164]. Accordingly, the cram down requirements must be met by the September 13, 2019 Plan as modified by the Amendment.

For the reasons explained in the Order Denying Confirmation, the Court finds that each element of 11 U.S.C. § 1129(a) except subsection (a)(8) have been met by the September 13, 2019 Plan as modified by the Amendment. Additionally, the change in the Amendment of

paying MidCap interest on the entire amount of its allowed claim instead of on the principal balance of the claim, satisfies the fair and equitable requirement of § 1129(b). The Court declines to address the arguments concerning feasibility in the Objection because, as explained on the record at the oral ruling January 24, 2020, these arguments have been fully addressed in the Order Denying Confiramtion, and the Court declines to reconsider that Order. [*See* Doc. 177].

For the reasons announced on the record at the oral ruling January 24, 2020 and the reasons above, it is hereby

ORDERED that Debtor's chapter 11 plan of reorganization, as amended December 2, 2019, is CONFIRMED and the Objection [Doc. 164] is OVERRULED.

END OF ORDER

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